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7 Attorneys for Plaintiff
XIMPLEWARE CORP.

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 **XimpleWare Corp.**, a California
Corporation,

13 Plaintiff;

14 v.

15 **Versata Software, Inc.**, f/k/a **Trilogy**
16 **Software, Inc.**, a Delaware corporation;
17 **Trilogy Development Group, Inc.**, a
California corporation; **Ameriprise**
18 **Financial, Inc.**, a Delaware corporation; and
Ameriprise Financial Services, Inc., a
19 Delaware corporation,

20 Defendants.
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Case No. 3:13-cv-5160-NC

**DECLARATION OF ZHENGYU ZHANG IN
SUPPORT OF PLAINTIFF XIMPLEWARE
CORP.'S *EX PARTE* APPLICATION FOR
TEMPORARY RESTRAINING ORDER, ORDER
TO SHOW CAUSE, AND ORDER GRANTING
EXPEDITED DISCOVERY**

1 I, Zhengyu Zhang, declare as follows:

2 1. My name is Zhengyu Zhang, but I go by and have gone by Jimmy Zhang for most
3 of my life. I am acting CEO and chief design engineer for XimpleWare Corp. ("XimpleWare"), a
4 corporation organized under the laws of and registered to do business in California. I make the
5 statements here of my personal knowledge, except where stated on information and belief, which
6 statements I believe to be true. I can and would competently testify to the facts set forth herein if
7 called as a witness.

8 2. I was born in Shanghai, China and came to the United States in 1991 when I was
9 18. I have been an American citizen since about 2003.

10 3. I initially attended community college before I transferred to the University of
11 California Berkeley. I am fluent in several computer programming languages including JAVA, C,
12 C++, C#, and Perl. At Berkeley, I earned Bachelor of Science and Master of Science degrees in
13 Electrical Engineering and Computer Sciences in 1996 and 1998, respectively.

14 4. I have spent the last 15 years in the software development and software
15 engineering field with leading software development and electronic design automation
16 companies like Synopsys, x.com, IPUnity, and VWeb, doing everything from technical support
17 to software engineering.

18 **Formation of XimpleWare**

19 5. I started XimpleWare in October 2002 with the goal of achieving maximum
20 efficiency using on-chip XML processing. I incorporated XimpleWare in 2002 with the help of
21 XimpleWare's corporate attorney, Thomas Bahrck. I am currently the Chief Executive Officer
22 for XimpleWare. In creating the "XimpleWare" name, I wanted something that incorporated the
23 letters x-m-l, inform the marketplace that our product was software code, and evoke the
24 efficiency and simplicity with which the product parses XML.

25 6. Originally, I had a cofounder in XimpleWare named Hui Tian who now has a
26 minor ownership claim and who helped process patent applications. However he split from the
27 venture in (2003), and no longer has any creative, managerial, or advisory role in XimpleWare or
28 the direction it takes in the future.

1 7. I wanted to avoid the controlling interest and complication of any venture
2 capitalist group involvement in XimpleWare, so my parents invested several hundred thousand
3 dollars in seed money. My father is also a software engineer who led a startup to an initial public
4 offering and eventually sold his company to Synopsys, where he stayed on as an engineer
5 building circuits. Much of the money for XimpleWare still comes from my parents and myself
6 who are the only other members of the XimpleWare Board of Directors. Those investments pay
7 the patent fees, and I have spent my entire 401(k) savings in support of the venture.

8 8. Open-source software is software made available publicly, and licensed with any
9 number of available licenses including GPL, Apache, BSD, LGPL, etc., which generally provide
10 that the copyright holder provides the rights to study, change, and distribute the software at no
11 cost to anyone and for any purpose. However, such licenses, including the GPL which we used to
12 license the XimpleWare Source Code, explicitly allows the creator of the copyrighted source
13 code to license his or her code privately for a fee. This allows one to monetize intellectual
14 property while still making the copyrighted code available for collaboration and future invention.

15 9. I began writing the software code in source code form and associated source
16 materials for my company in 2004 and I estimate that I have personally put in over 10,000
17 person hours of computer programming over the last 10 years of work that I have personally
18 done.

19 10. I made the business decision to license the XimpleWare source code with the
20 GNU General Public License version 2 ("GPL"), one of many open source licenses available to
21 developers interested in an open source development approach. A copy of the GPL is attached as
22 **Exhibit 1**. I chose to license the Source Code under the GPL because it is one of the most
23 restrictive licenses available for open-source programmers, requiring that any derivative code
24 developed by incorporating GPL-protected code must be returned to the open-source community.

25 11. I have always incorporated all copyright and other notices required by the GPL,
26 and I have always incorporated those notices into every iteration of the XimpleWare Source
27 Code checked in via XimpleWare's CVS revision control system. My SourceForge username is
28 "jzhang2004".

1 12. I made the conscious decision to use an open source approach for the
2 development and maintenance of the XimpleWare Source Code (the “Source Code”), and built
3 XimpleWare’s business model around that decision.

4 **The XimpleWare Software Product: VTD-XML**

5 13. The complete XimpleWare product, known as “VTD-XML” and “VTD-XML
6 Extended” (the “Product”), is made up of many constituent parts, each with individual functions
7 and written in several different programming languages. However, I developed the majority of
8 the XimpleWare code in Java.

9 14. XML is ubiquitous in today’s business world with an almost limitless number of
10 applications. The XimpleWare Code and Product I created reads and parses XML code at a rate
11 estimated at 5 to 10 times the speed of current XML parsing programs, effecting maximum
12 efficiency, speed, and vastly reducing computing needs and costs.

13 15. XimpleWare has had discussions and interest from several industry leaders for
14 licensing and we have established ourselves as one of the leading companies in this area of
15 XML.

16 16. As I wrote and updated the Source Code, I maintained the body of code in an
17 online open source repository called SourceForge. That repository allowed me to check out the
18 Source Code, edit and update sections as necessary, and then check it back in with time, date,
19 and contributor information indicated on any changes made to track the revisions and evolution
20 of the Source Code. Any changes were recorded using a CVS revision control system. As the
21 Source Code as a whole is made up of many different files, I would (and still do) update each file
22 periodically, checking in all changes so that an updated version of the Source Code is available
23 to the open source community.

24 17. I am the contributor of record on almost all, if not all, changes made to the Source
25 Code. Periodically, other open source collaborators would email suggested changes to me, but
26 those suggestions were never more than 20–30 suggested statements (sometimes called “lines of
27 code”) and I never included these third party suggestions but rather I re-wrote each of them with
28 my own programming, which I placed into the Source Code after a thorough review of the

1 suggested code's functionality, an analysis of whether it served the purpose of speeding up the
2 Product's XML parsing, and after a complete clean-room rewrite of the suggested functionality.

3 18. All contributions (including my own) to the XimpleWare Source code were
4 "works for hire" and all employees and other collaborators understood it as such.

5 19. My brother-in-law, Harry Xu, has also collaborated on the XimpleWare Source
6 Code, but has assigned all work and intellectual property to XimpleWare, and has no ownership
7 claim. There are no other collaborators, and, as mentioned above, I checked in almost all, if not
8 all, revisions of the Code into SourceForge. All changes go through me as the design engineer.

9 20. Harry Xu has signed an Assignment Agreement assigning all of his collaborative
10 efforts in XimpleWare to the Company.

11 21. XimpleWare has never used any substantial monies for marketing except through
12 the GPL licensing approach as XimpleWare expects the Product to market itself by way of the
13 commercial licensing agreements that should result after proper GPL usage and without violation
14 of the GPL terms, conditions or restrictions.

15 **XimpleWare's Issued U.S. Copyrights**

16 22. XimpleWare is the owner of all right, title, and interest in all copyrights including
17 but not limited to all U.S. copyrights on the Source Code and on the Source Materials, all of
18 which have appropriate copyright notices contained conspicuously on the first page of each
19 work. **Exhibit 2** is a representative example of one such copyright notice on one file in the VTD-
20 XML Source Code.

21 23. There has been no challenge to any of XimpleWare's patents, copyrights, trade
22 secrets, or any other XimpleWare intellectual property rights.

23 **Licensees**

24 24. The XML parsing community acknowledged the validity and strength of
25 XimpleWare's innovation through licensing discussions and signed OEM and end-user license
26 agreements.

27 25. Due to the fundamental properties of XML technology, XML parsing innovations
28 are very hard to sell because they are not end-user products, *i.e.*, they have to be integrated into

1 another existing product. This principle drove my decision to distribute the Source Code mainly
2 under Original Equipment Manufacturer (“OEM”) agreements. The Product is an enabler for any
3 product that uses XML in its applications, but in order to see the upside in the parsing speed,
4 customers have to try it. All of this factored into the business and marketing decisions I made for
5 the company.

6 26. XimpleWare has negotiated and closed several OEM licensing deals, under which
7 the customers were able to make commercial uses of XimpleWare’s VTD-XML product without
8 the restrictions of the GPL.

9 27. In addition to the OEM licenses, there has been significant licensing interest from
10 major companies and technology industry leaders.

11 **Ameriprise and Versata/Trilogy**

12 28. On July 22, 2013, I learned of the Versata/Ameriprise lawsuit in Texas over a
13 contracting agreement.

14 29. I understand from various public records that Versata and Trilogy were two
15 companies before they merged recently, and now Trilogy exists as a subsidiary of Versata.

16 30. I also understand (and some of this is reflected in published litigation files) that
17 Versata acted as a software contractor for a company called Ameriprise until Ameriprise
18 attempted to write its own software using programmers in India to replace the ongoing Versata
19 work. It is my understanding that Versata sued Ameriprise for breach of their contracting
20 agreement.

21 31. At some point during that lawsuit, Ameriprise noticed that that there were sections
22 of code in the “DCM” Versata product that contained GPLed XimpleWare Source Code which
23 was used without my consent and without honoring explicit clauses of the GPL related to the
24 return of source code to the open source community. **XimpleWare has not granted a**
25 **commercial license or any other permission or authorization to Versata or Ameriprise for**
26 **the use of any XimpleWare product.**

27 32. After our copyrights were registered with the U.S. Copyright Office and after all
28 investigatory work was completed, I authorized legal counsel to give notice to Trilogy, Versata

1 and all related parties that they had no rights to infringe the copyrights or the patents or any of
2 the intellectual properties of XimpleWare. Without a commercial license, they were and are
3 infringers and given their refusal to enter commercial licenses with XimpleWare, they were and
4 are willfully infringing our intellectual property rights. They have refused to obtain any license
5 with us, they have no permission from us, and they simply have continued to infringe; there is no
6 doubt in my mind that they are not licensed and that they are simply choosing to willfully
7 infringe our copyrights, our copyrights, our patents, and our other intellectual property rights.
8 Without an injunction against them, we are suffering, and we will **suffer irreparable injury in**
9 **the loss of control over our Source Code and over our entire licensing program.** They must
10 be enjoined from infringing and they must be directed to account for all copies, in whole or in
11 part, in any form on any electronic media which they have as well as all copies they have
12 deployed to Ameriprise and/or to any others in the field.

13 33. We estimate that the defendants have reproduced and distributed **thousands of**
14 **unauthorized copies** of XimpleWare software, which is now illegally in use with over 100,000
15 (or more) unauthorized users of our software. Only defendants know the precise numbers, and
16 the Court should compel them to immediately account for all copies and to account for all users
17 of XimpleWare software they have illegally distributed and allowed others to use without any
18 license, permission or other authorization from me or anyone else at XimpleWare.

19 34. We also estimate that they have collected revenues illegally in amounts greater
20 than \$100,000,000 based on distribution of computer software that includes unauthorized and
21 illegal copies of XimpleWare computer software, and appropriate orders should be entered
22 compelling defendants to account for all revenues arising directly or indirectly through any
23 software which includes any version of XimpleWare computer software and for all customers,
24 clients, contractors, employees, and all other users of any version of XimpleWare software
25 received from any of the defendants.

26 35. Irreparable injury has been suffered by XimpleWare as a result of Defendants'
27 unauthorized use of XimpleWare's copyrighted computer software; in effect, Defendants have
28 usurped control, for commercial purposes, over XimpleWare's computer software and they are

1 reproducing it, executing it, and otherwise exploiting it without permission and in repeated
2 violation of XimpleWare's exclusive rights under the U.S. Copyright Act. The result is both the
3 denial of XimpleWare's rights to sole and exclusive control over the commercial licensing of its
4 copyrighted computer software as well as the failure of Defendants, and each of them, to account
5 for the number of copies which have been exploited by each of them. Injunctive relief is
6 requested to prevent the foregoing irreparable injury from continuing.

7
8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct, and that I signed this declaration on November 22, 2013 in
10 Milpitas, California.

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13 Zhengyu Zhang
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